

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EURITA BUTLER

Plaintiff,

-against-

COHEN & SLAMOWITZ, LLP

Defendant.

COMPLAINT AND DEMAND
FOR JURY TRIAL

JUDGE RAKOFF
08 CIV. 4728

Plaintiff by and through her attorney Kleinman LLC, complaining of the Defendant,
respectfully alleges and shows to the Court as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for
Defendant's violations of the Fair Debt Collection Practices Act,
15 U.S.C. 1692 et seq. (hereinafter "FDCPA") which prohibits debt
collectors from engaging in abusive, deceptive and unfair practices
violation of the New York State General Business Law as well as the torts
of negligence and gross negligence.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. 1692k(d), 28 U.S.C.
section 1337 and supplemental jurisdiction exists for State law claims
pursuant to 28 U.S.C. section 2201 and 2202 and New York State law.

Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

PARTIES

3. Plaintiff Eurita Butler is a natural person residing in New York County, New York.
4. Plaintiff is a "consumer" as defined by 15 U.S.C. section 1692(a)(3).
5. Defendant Cohen & Slamowitz, LLP is a Domestic Registered Limited Liability Partnership. Its principal executive office is located at 199 Crossways Park Drive, Woodbury, NY 11797. Defendant attempts to collect debts alleged to be due another.

FACTUAL ALLEGATIONS

6. On or about March 19, 2008, the Defendant sent a collection letter to the Plaintiff stating that she was indebted to the creditor RAB PERFORMANCE RECOVERIES, LLC, in the amount of \$14,742.12, which purportedly purchased a Direct Merchants Credit Card Bank account. Exhibit A.
7. Plaintiff, timely disputed the validity of the debt, disputed that RAB Performance purchased a Direct Merchants Credit Card Bank attributable to Eurita Butler, and requested the address of the Original creditor.
8. Defendant attempted to collect the disputed debt prior to providing Ms. Butler verification of the purported \$14,616.08 debt as required by 15 U.S.C. § 1692g(b). Exhibit B.

9. Defendant attempted to collect the disputed debt prior to providing the timely demanded address of the original creditor as provided by 15 U.S.C. § 1692g(a)(5).
10. Defendant failed to evidence that RAB Performance Recoveries, LLC is the current creditor as required by 15 U.S.C. § 1692g(a)(2).
11. Defendant failed to accurately recite the amount of the debt as required by 15 U.S.C. § 1692g(a)(1).

CAUSES OF ACTION UNDER THE FDCPA

12. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
13. Defendant violated 15 U.S.C. sections 1692e, 1692e(10), 1692g(a)(1), 1692g(a)(2), 1692g(a)(4), 1692g(a)(5) and 1692g(b) by attempting to collect disputed debt prior to obtaining verification of the debt, verification of ownership of the debt, by failing to publish the true amount of the debt and by failing to provide the addresss of the original creditor.
14. Defendant violated 15 U.S.C. section 1692d in that it engaged in conduct the natural consequence of which is to harass, oppress and/or abuse the Plaintiff. Defendant's actions include but are not limited to contacting her concerning an account in which she bears no responsibility and continued collection after timely dispute
15. Defendant violated 15 U.S.C. sections 1692e and 1692e(10) in that defendant used false, deceptive and or misleading representations and/or

means in connection with the collection of a debt, by claiming that RAB Performance Recoveries, LLC is a creditor of Ms. Eurita Butler.

16. Defendant violated 15 U.S.C. sections 1692g and 1692g(a)(4) by collecting disputed debt prior to verification.

CAUSES OF ACTION UNDER NEW YORK GENERAL BUSINESS LAW

17. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
18. Defendant violated New York General Business Law section 349 et seq. Defendant's violations include, but are not limited to the following:
 - (a) By sending a letter claiming a consumer owed \$14,742.12.
 - (b) By attempting to collect payment from a consumer who bears no obligation.
19. Plaintiff suffered actual damages as a result of the Defendant's actions.

NEGLIGENCE AND GROSS NEGLIGENCE

20. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
21. Defendant's actions and omissions as described herein constitute negligence in that Defendant owed Plaintiff a duty of reasonable care in the collection of alleged debt, said duty was breached and said breach was the proximate cause of damages suffered by Plaintiff.

22. Defendant's actions and omissions described herein constitute gross negligence in that Defendant owed Plaintiff a duty of reasonable care in the collection of the alleged debt, said duty was breached, said breach was the proximate cause of damages suffered by Plaintiff and Defendant's actions and omissions demonstrate a want of scant care and indifference to the rights of Plaintiff. Defendant's actions were willful, malicious and reckless. Defendant's actions were highly unreasonable and demonstrate an extreme departure from ordinary care.
23. Plaintiff is entitled to punitive damages for the actions and omissions of the Defendant as described.

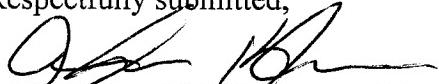
DAMAGES

24. Because of the acts and omissions of Defendant as described, the Plaintiff has suffered financial loss, mental anxiety, emotional suffering, worry, loss of appetite, humiliation, sleeplessness and mental distress. Further, Defendant's acts and omissions are willful, malicious and demonstrative of a reckless disregard for the Plaintiff's rights and well being.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant, for the following:

- a. Statutory damages pursuant to 15 U.S.C. section 1692k;
- b. Actual damages;
- c. Statutory damages pursuant to New York General Business Law;
- d. Costs and reasonable attorney's fees pursuant to 15 U.S.C. section 1692k and New York General Business Law;
- e. Punitive damages pursuant to New York law; and
- f. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RexCorp Plaza
Uniondale, New York 11556-0626
Telephone (516) 522-2621
Facsimile (888) 522-1692

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury in this action.



Abraham Kleinman

**Law Offices
Cohen & Slamowitz, LLP**

(800) 293-6006 ext. 8990

(516) 686-8990

Fax 516 584-1006

**P.O. Box 9004
Woodbury, NY 11797-9004**

March 19, 2008



LDUNN1

**EURITA BUTLER
83 SAINT NICHOLAS PL
NEW YORK NY 10032-8070**

**Re: Original Creditor: DIRECT MERCHANT CREDIT CARD BNK
Creditor: RAB PERFORMANCE RECOVERIES, LLC
Account No. 5458000119009310
C&S File No.: C302542
Balance Due as of March 19, 2008: \$14,616.08**

Dear EURITA BUTLER:

Please be advised that the above-referenced creditor has referred this account to our law office for collection. Demand is hereby made for the balance due as stated above. Please contact us to discuss same.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.

VALIDATION NOTICE

Unless you dispute the validity of this debt or any portion thereof within 30 days after receipt of this notice, the above debt will be assumed to be valid by this office. Should you notify this office in writing at the address shown above within 30 days after receipt of this notice that the debt or any portion thereof is disputed, we will obtain and mail to you verification of the debt or a copy of the judgment, if any, and if also requested, the name and address of the original creditor, if different from the current creditor.

This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

Law Offices of Cohen and Slamowitz, LLP

P.S. All checks should be forwarded directly to this office. Our office also accepts Western Union, Money Gram, MasterCard, VISA, Discover Card, and checks via phone, or visit our website at www.cslawllp.com to make payments online.



**Law Offices
Cohen & Slamowitz, LLP**

(516) 686-8990
(800) 293-6006 ext. 8990
Fax (516) 908-7993

199 Crossways Park Drive
P.O. Box 9004
Woodbury, NY 11797-9004

May 1, 2008



JAMES H. SHENWICK, ESQ.
655 THIRD AVENUE, 20TH FL.
NEW YORK, NY 10017

Re: Original Creditor: DIRECT MERCHANT CREDIT CARD BNK
Creditor: RAB PERFORMANCE RECOVERIES, LLC
Debtor: EURITA BUTLER
Account No. 5458000119009310
C&S File No: C302542
Balance Due as of May 1, 2008: \$14,742.12

Dear JAMES H. SHENWICK, ESQ:

Please note that this office represents the above referenced creditor. Enclosed please find documentation to support our client's claim for the balance due.

Please contact this office to make arrangements to pay the balance outstanding.

Very truly yours,

By: RITA HILL, ESQ.

P.S. All checks should be forwarded directly to this office. Our office also accepts Western Union, Money Gram, MasterCard, VISA, Discover Card, and checks via phone, or visit our website at www.csllawllp.com to make payments online.

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.**



Ibutodef

Fax: (516) 908-7993 | Email: cslawllp@optonline.net

RAB Performance Recoveries, LLC

10 Forest Avenue
Paramus, NJ 07652

EURITA BUTLER
83 SAINT NICHOLAS PL
NEW YORK, NY 10032

| ACCOUNT NUMBER | BALANCE DUE |
|------------------|-----------------|
| 5458000119009310 | 11887.23 |
| CLOSING DATE | PAST DUE AMOUNT |
| 2/22/2008 | 11887.23 |

Co-Debtor Name (if applicable)

| ACCOUNT NUMBER | CLOSING DATE | CREDIT LIMIT | AVAILABLE CREDIT |
|------------------|--------------|--------------|------------------|
| 5458000119009310 | 2/22/2008 | \$0.00 | \$0.00 |

| CHARGEDOFF DATE | REFERENCE NUMBER | NEW TRANSACTIONS | AMOUNT |
|-----------------|------------------|------------------|----------|
| 8/31/2005 | SSN xxx-xx-0024 | PAST DUE AMOUNT | 11887.23 |

| Original creditor: METRIS/HSBC | PAYMENTS/CREDITS | BALANCE DUE |
|--------------------------------|---------------------------------------|-------------|
| Debt type: CARD | \$0.00 | 11887.23 |
| Charged-off on: 8/31/2005 | Finance charge percentage rate: 0.00% | |
| Open Date: 6/5/1998 | Annual percentage rate (APR): 0.00% | |
| Last Pymt Date: 2/3/2005 | Fees: 0.00% | |
| Last Pymt Amt: | | |

This account was purchased by RAB Performance Recoveries, LLC on 2/22/2008